

Donald J. Churnside, OSB #791876
 Megan I. Livermore, OSB #054789
 GAYDOS, CHURNSIDE & BALTHROP, P.C.
 Attorneys at Law
 440 East Broadway, Suite 300
 Eugene OR 97401
 Telephone: (541) 343-8060
 Facsimile: (541) 343-1599
 Email: don@oregonlegalteam.com
 Attorneys for Curtis Restaurant Equipment, Inc., Defendant

IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE DISTRICT OF OREGON

In re Berjac of Oregon, Debtor(s).	Chapter 11 No.: 12-63884-tmr11
Thomas A. Huntsberger, Plaintiff, v. Curtis Restaurant Equipment, Inc. Defendant.	Adversary Proceeding Case No. 12-06189-tmr MOTION FOR SANCTIONS PURSUANT TO BR 9011

This motion was served upon Plaintiff's counsel not less than 21 days prior to the date of filing.

Pursuant to Bankruptcy Rule 9011, Defendant hereby moves for an order granting sanctions in favor of Defendant and against Plaintiff, for Plaintiff's failure to withdraw Plaintiff's allegations seeking recovery based upon the federal and state fraudulent transfer statutes seeking

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Eugene, Oregon 97401
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1 to invalidate a deed of trust and lien created by such deed of trust. To the extent such deed of
2 trust did not secure a contemporaneous exchange, the deed of trust was pledged to secure an
3 antecedent debt. Both in §54(d)(2)(A) of the Bankruptcy Code and ORS 95.220 there is an
4 express exception for the granting of a lien securing an antecedent debt. The transfer of the
5 security interest to Defendant to secure the antecedent debt is a frivolous allegation and should
6 be stricken. Defendant should be awarded its reasonable attorney's fees in defending against
7 such claim.

8 Pursuant to Bankruptcy Rule 9011, Defendant hereby moves for an order granting
9 sanctions in favor of Defendant and against Plaintiff, for Plaintiff's failure to withdraw Plaintiff's
10 allegations seeking recovery against Defendant as an insider of Debtor, based upon 11 USC
11 §547. As supported by the Affidavit of William F. Kottas filed herewith, there is no evidentiary
12 support for such allegations, and no further discovery or investigation will lead to any
13 evidentiary support. Such allegations against Defendant are frivolous. Defendant should be
14 awarded its reasonable attorney's fees in defending against such claims.

15 POINTS AND AUTHORITIES

16 BR 9011(c) empowers the court to impose sanctions upon a showing that BR 9011(b) has
17 been violated. There is no support for Plaintiff's claim to set aside the trust deed granted in favor
18 of Defendant securing the antecedent debt. It is contrary to the express language of the statute.
19

20 In the present case, there is no support for any claim that Defendant is an insider of
21 Debtor. 11 USC §101(31) defines an insider. Plaintiff's complaint does not allege which type of
22 entity Debtor purports to be. If the Debtor is a corporation, an insider is defined as a director,
23 officer, person in control, partnership in which the Debtor is a general partner, general partner of
24 the Debtor, or a relative of any such individuals. If the Debtor is a partnership, an insider is a
25
26

1 general partner in the Debtor, a relative of a general partner or person in control, a partnership in
 2 which the partnership is a general partner, a general partner of the Debtor, or person in control of
 3 the Debtor.

4 Although the law does acknowledge an expanded definition of insider, there must be
 5 facts supporting those allegations. In *Friedman v. Shirley Plotsky Brokers, Inc.*, 126 B.R. 63
 6 (1991), the court considered the expanded possibility of insider status. The court concludes that
 7 in certain situations the parties' relationship compels a conclusion that the parties' affinity
 8 prevails over ordinary course business dealings. There are no facts in the present case that
 9 compel that conclusion, and no suggestion that the transactions alleged by Plaintiff are other than
 10 ordinary course transactions between Plaintiff and Defendant. As established by the Affidavit of
 11 Williams F. Kottas, the chief financial officer of Defendant, there are no factual grounds for
 12 asserting any connection between Debtor and Defendant which would establish Defendant as an
 13 insider of Debtor.
 14

15 BR 9011 requires that this motion be served upon Plaintiff not less than 21 days prior to
 16 the filing, to allow Plaintiff an opportunity to withdraw or appropriately correct such allegations.
 17 This motion has been properly served on Plaintiff, and Plaintiff has failed to correct such
 18 allegation. Defendant should be awarded its reasonable attorney's fees in pursuing this motion
 19 and seeking to eliminate this frivolous claim.
 20

21 DATED this 2nd day of August, 2013.

22 GAYDOS, CHURNSIDE & BALTHROP, P.C.

23 By: /s/ Donald J. Churnside
 24 Donald J. Churnside, OSB #791876
 25 e-mail: don@oregonlegalteam.com
 26 Megan I. Livermore, OSB #054789
 e-mail: megan@oregonlegalteam.com
 Attorneys for Curtis Restaurant Equipment, Inc.

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CERTIFICATE OF SERVICE

Defendant Curtis Restaurant Equipment, Inc. hereby certifies that the MOTION FOR SANCTIONS was served on the parties listed below by U.S. Mail or ECF, as noted, on August 2, 2013:

U.S. Mail

Plaintiff	Thomas A. Huntsberger c/o Thomas A. Gerber and Daniel F. McNeil Bullivant Houser Bailey PC 300 Pioneer Tower 888 SW Fifth Avenue Portland, OR 97204-2089
Debtor	Berjac of Oregon c/o Keith Y. Boyd 724 S. Central Ave., #106 Medford, OR 97501
US Trustee	US Trustee 405 E. 8 th Ave., #1100 Eugene, OR 97401-2706

GAYDOS, CHURNSIDE & BALTHROP, P.C.

Dated: August 2, 2013

By: /s/ Donald J. Churnside
Donald J. Churnside, OSB 791876
Megan I. Livermore, OSB No. 054789
Of Attorneys for Curtis Restaurant Equipment, Inc.